

November 5, 2004

**All 11 Ballot Initiatives Protecting Marriage Pass****Same-Sex Marriage — Post-Election Update**

On November 2<sup>nd</sup>, the voters of 11 states approved state constitutional amendments to protect traditional marriage. The effect of these state constitutional amendments should be to prevent state supreme courts from imposing same-sex marriage on those states. *However*, state constitutional amendments still can be invalidated if federal courts conclude that the U.S. Constitution requires the recognition of same-sex marriage. For example, an ACLU lawsuit in Nebraska seeks to overturn a state constitutional amendment passed overwhelmingly by voters. These state amendments will thwart some state judicial activism, but they will not stop federal courts from imposing same-sex marriage.

State	Amendment Support in Pre-Election Polling	Actual Support from November 2 Election
Arkansas	65% <sup>1</sup>	<b>75%</b>
Georgia	69% <sup>2</sup>	<b>76%</b>
Kentucky	72% <sup>3</sup>	<b>75%</b>
Michigan	52% <sup>4</sup>	<b>59%</b>
Mississippi	n/a	<b>86%</b>
Montana	61% <sup>5</sup>	<b>67%</b>
North Dakota	52% <sup>6</sup>	<b>73%</b>
Ohio	48% <sup>7</sup>	<b>62%</b>
Oklahoma	59% <sup>8</sup>	<b>76%</b>
Oregon	50% <sup>9</sup>	<b>57%</b>
Utah	64% <sup>10</sup>	<b>66%</b>

<sup>1</sup> October 10-11, 2004, Zogby/ADG.<sup>2</sup> September 25-27, 2004, Strategic Vision.<sup>3</sup> September 10-15, 2004, Courier-Journal.<sup>4</sup> September 28-30, 2004, Glengariff Group.<sup>5</sup> September 20-22, 2004, Mason-Dixon.<sup>6</sup> October 30, 2004, Forum poll.<sup>7</sup> October 14-17, 2004, ABC News.<sup>8</sup> October 8-10, 2004, Wilson Research Strategies.<sup>9</sup> October 15-18, 2004, Gallup.<sup>10</sup> October 4, 2004, KSL-TV.

## Increased Court Challenges to Traditional Marriage

- Lawsuits challenging states' traditional marriage laws and seeking to force recognition of same-sex marriage (or to overturn state Defense of Marriage Acts) are pending in **13 states** — California, Connecticut, Florida, Indiana, Louisiana, Maryland, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, and Washington.
- The Oklahoma federal lawsuit (filed November 4, 2004) not only seeks a federal court order finding the popularly enacted state constitutional amendment unconstitutional under the U.S. Constitution, but it also seeks an order holding the federal Defense of Marriage Act unconstitutional insofar as it bolsters states' abilities to refuse recognition to out-of-state same-sex marriages.
- The Louisiana statewide ballot initiative is being challenged in state court, as same-sex marriage advocates seek to override the will of 78 percent of voters.
- Same-sex marriage activists have pledged to file additional lawsuits seeking to overturn the popularly enacted ballot initiatives passed on November 2<sup>nd</sup>.
- In addition, lawsuits also are pending in Alaska and Montana to force those states to grant same-sex couples the benefits of marriage but not marital status itself.

The attached background document gathers information regarding state-level legal and political activity relating to the future of marriage, including (1) legislative proposals to protect or redefine marriage, (2) efforts to involve the people directly through ballot initiatives, and (3) court challenges regarding the definition of marriage. Where available, relevant state-level polling data are provided.

## State-Level Marriage Protection Activity in 2004 (last updated November 5, 2004)

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Alabama</b>	<p>1998 — Passed state law defining marriage as man-woman and refusing recognition to inconsistent out-of-state marriages. 1998 Alabama Laws Act 98-500.</p> <p>2004 — Proposal to amend state constitution to protect traditional marriage passed state Senate 24-1 on April 15. It never received a vote in the state House and the legislative session expired.</p> <p>August 2004 — Some Republicans are urging Gov. Riley to address a state constitutional amendment protecting marriage if he calls a special session this fall. [updated 8/30/04]</p>	<p><b>None.</b></p> <p>[See 2004 items to left]</p>	<p><i>Case recently dismissed.</i> Two men in an Alabama state prison sued the state for the right to marry each other, saying they had a federal constitutional right to marry. A state court dismissed the lawsuit in April 2004. [updated 4/22]</p>	<p>March 2004 – Nearly 80% of respondents oppose same-sex marriage (“SSM”); only 50% support civil unions. See AP State and Local Wire, Dateline: Mobile, Alabama, 3/15/2004.</p>
<b>Alaska</b>	<p>1998 — Alaska voters passed a state constitutional amendment defining marriage as man-woman.</p>	<p><b>None.</b></p> <p>(Constitutional amendment already passed by ballot initiative in 1998.)</p>	<p><i>Case pending in state supreme court.</i> The ACLU has sued to prevent Alaska from granting benefits to married couples if the state does not provide the same benefits to same-sex couples. Thus, the lawsuit does not demand same-sex marriage because the state constitution already prohibits that. Instead, it asks for the court to override the legislature’s longstanding decision to link some state benefits to marital status. This case has been argued in the Alaska Supreme Court and could be decided any day. [updated 9/17]</p>	<p>No apparent polling data.</p>

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State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Arizona</b>	<p>1996 — Law passed protecting marriage as man-woman.</p> <p>2004 — State constitutional amendment introduced in state legislature. No further action.</p> <p>2004 — State House passed nonbinding resolution calling on Congress to send to states a federal marriage amendment. [updated 5/3]</p>	<b>None.</b>	<p><i>State court challenge to marriage laws defeated in 2004.</i> Two men were denied a marriage license and sued in state court. They lost in district court and on their first appeal. (Gay rights groups tried to talk them out of pursuing their case because it interfered with the groups' national litigation strategy.) On May 25, 2004, the Arizona Supreme Court refused to hear their final appeal, which <i>should</i> bring this particular litigation to an end. [updated 5/26]</p>	<p>March 2004 – 60% oppose SSM; however, 54% say they oppose amending the U.S. Constitution. See <i>Tucson Citizen</i> 3/20/2004.</p> <p>Poll by Social Research Laboratory at Northern Arizona University.</p>
<b>Arkansas</b>	<p>1998 — Legislature passed state law protecting traditional marriage as man-woman.</p> <p>[updated 5/4]</p>	<p><b>PASSED NOVEMBER 2004: 75% to 25%</b></p> <p><b>Arkansas Marriage Amendment Text</b>  “Marriage consists only of the union of one man and one woman. Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman. The legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.”</p> <p>[updated 11/4]</p>	<p>[see item to left]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Oct. 10-11, 2004 – 64.8% support and 32.6% are opposed to “a proposed constitutional amendment to define marriage as between one man and one woman and to ban gay marriages and civil unions.” Poll by Zogby/ADG.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
California	<p>2000 — Voters passed Prop. 22, a statewide ballot initiative, with 60% of the vote. Prop. 22 defines marriage in California as only man-woman.</p> <p>2003 — The California legislature passed a law in October 2003 to create same-sex “domestic partnerships” that gave many (but not all) of the rights and benefits of marriage to same-sex couples. Then-Governor Davis signed the law.</p> <p>2004 — Legislature passed a resolution opposing federal marriage amendment. [updated 6/25]</p>	None.	<p>1. <i>San Francisco Mayor rebuffed by California Supreme Court.</i> In February 2004, San Francisco’s mayor defied state law (Prop. 22 – see item to left) and began issuing marriage licenses to same-sex couples. Same-sex couples from 46 states received more than 4,000 marriage licenses until the California Supreme Court ordered the city to stop issuing them. On August 12, 2004, the California Supreme Court invalidated those licenses and held that the Mayor was without authority to defy state law. The court did NOT address the constitutionality of same-sex marriage, deferring to the cases currently pending in the trial court.</p> <p>2. <i>Cases pending in state trial court.</i> Lawsuits have been filed to challenge California’s statutory protection of traditional marriage. Those lawsuits are in the preliminary stages, consolidated before a state trial court in San Francisco.</p> <p>3. <i>Civil union lawsuit pending.</i> Supporters of Prop. 22 have sued to block the new state domestic partnership law (see item to left). In September 2004, a state trial court ruled against their suit, concluding that Prop. 22 did not bar civil unions or domestic partnerships. [updated 9/19]</p> <p>4. <i>Federal court lawsuit</i> filed that challenges the constitutionality of federal DOMA.</p>	<p>June 2004 — 53% oppose SSM; just 41% support a federal constitutional amendment to define marriage as man-woman. See SF Chronicle, 6/4/2004.</p>

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State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Colorado</b>	<p>2000 — Legislature enacted state law protecting marriage as between a man and a woman.</p> <p>2004 — The state House voted 38-27 to <u>not</u> vote on a resolution calling on Congress to pass the Federal Marriage Amendment. [updated 4/27/04]</p>	<b>None.</b>		<p>June 2004 – 50% oppose federal constitutional amendment; 41% favor. See <i>Denver Post</i>, 7/04/04.</p> <p>Dec. 2003 – 47% oppose federal constitutional amendment; 43% support it. 59% support civil unions. See AP-Denver article 12/29/03.</p>
<b>Connecticut</b>	<p>State law provides that “the current public policy of the state of Connecticut is now limited to a marriage between a man and a woman.” Conn. Stat., ch. 803, § 45a-727a (sub (4)).</p> <p>2004 — Bill introduced to allow same-sex couples to marry (HBO 3069). [updated 5/20/04]</p>	<b>None.</b>	<p><i>Massachusetts-style lawsuit filed.</i></p> <p>In August 2004, the same legal activists who filed the <i>Goodridge</i> lawsuit in Massachusetts have filed a lawsuit challenging Connecticut’s traditional marriage law. The case is pending in state trial court.</p> <p>[updated 8/30/04]</p>	<p>April 2004 – 49% support SSM; 46% oppose SSM. 53% said they opposed passing a law to define marriage as being between a man and woman. 53% also said they think SSM should <i>not</i> be viewed the same as marriage between a man and woman. See AP article Storrs, Conn. 4/6/04. Poll by UCONN.</p>
<b>Delaware</b>	<p>1996 — Legislature enacted state law protecting traditional marriage as man-woman.</p> <p>2004 — State constitutional amendment introduced in state legislature in March 2004, but state Senate President said he will stop measure from coming to a vote (SB 246).</p> <p>[updated 5/4/04]</p>	<b>None.</b>		No apparent polling data.

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<b>Florida</b>	1997 — Legislature enacted state law protecting marriage as man-woman.	<p><b>None.</b></p> <p>(Voters had the ability to amend the state constitution by statewide initiative on the November 2004 ballot if approximately 489,000 signatures were gathered by August 3, 2004, but no effort to collect signatures materialized.)</p>	<p><i>Three federal court challenges to federal DOMA.</i> A private attorney, Ellis Rubin, has filed three lawsuits in federal courts, each of which challenges federal DOMA on federal constitutional theories. He has said he plans to file more cases.</p> <p><i>At least six separate cases pending in state trial court.</i> Five cases have been filed in state trial court by Mr. Rubin challenging Florida's traditional marriage laws. Another case was filed in Key West by the National Center for Lesbian Rights.</p> <p>In addition, a pro-traditional marriage group, Liberty Counsel, has filed lawsuits in seven Florida counties asking the courts to rule immediately upon the constitutionality of the Florida state DOMA and its current reservation of civil marriage to man-woman unions.</p> <p>[updated 8/30]</p>	Feb. 18-22, 2004 – 54% support U.S. constitutional amendment to prohibit gay men and women from marrying; 40% oppose. See <i>Florida Times-Union</i> (Jacksonville) 3/1/04

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<b>Georgia</b>	<p>1996 — Legislature enacted state law defining marriage as man-woman.</p> <p>2004 — Legislature approved a state constitutional amendment defining marriage as man-woman. Measure will be on November 2004 ballot. The legislature approved the amendment only after heavy public pressure, especially from African American religious leaders.</p> <p>[updated 5/5/04]</p>	<p><b>PASSED NOVEMBER 2004: 76% to 24%</b></p> <p><b>Georgia Marriage Amendment Text</b>  “(a) This state shall recognize as marriage only the union of man and woman. Marriages between persons of the same sex are prohibited in this state. (b) No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. This state shall not give effect to any public act, record, or judicial proceeding of any other state or jurisdiction respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state or jurisdiction. The courts of this state shall have no jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties’ respective rights arising as a result of or in connection with such relationship.”</p> <p>[updated 11/4]</p>	<p>Lawsuits challenging the popularly enacted state constitutional amendment are anticipated. Legal efforts to block the amendment before it reached the ballot failed.</p> <p>[updated 11/5/04]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Sept. 25-27, 2004 – 69% support and 23% oppose a state constitutional amendment that would ban same-sex marriages in Georgia. Poll by Strategic Vision.</p>
<b>Hawaii</b>	<p>1998 — A constitutional amendment was approved that reserved to the legislature the power to define marriage. The legislature subsequently defined marriage as man-woman.</p> <p>[updated 5/3/04]</p>	<p><b>None.</b></p>		<p>No apparent polling data.</p>



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<b>Idaho</b>	<p>1996 — Legislature passed a state law stating that same-sex marriage violated the public policy of Idaho.</p> <p>2004 — State House passed a constitutional amendment defining marriage as man-woman, but state Senate failed to act. [updated 5/4/04]</p>	<b>None.</b>		No apparent polling data.
<b>Illinois</b>	<p>1996 — Legislature passed a state law defining marriage as man-woman.</p> <p>2004 — At least four state constitutional amendments are pending in state House and Senate committees, but are expected to remain stalled there. [updated 5/4/04]</p>	<b>None.</b>		<p>March 2004 – 60% oppose legalizing gay marriage; 27% support it; 53% oppose a U.S. constitutional amendment; 34% support an amendment. See <i>The State Journal-Register</i> (Springfield, IL) 4/15/04.</p>
<b>Indiana</b>	<p>1997 — Legislature passed a state law protecting marriage as man-woman.</p> <p>2004 — A state constitutional amendment was proposed and passed the state Senate, but state House Democrats refused to permit the measure to a vote and the legislature adjourned on March 4, 2004, without approving the constitutional amendment. [updated 4/27/04]</p>	<b>None.</b>	<p><i>Case pending in Indiana Court of Appeals.</i> Three same-sex couples sued in Marion County Superior Court for the right to marry under the state constitution. The case was dismissed, and is now on appeal to the intermediate state appeals court. It is expected that, regardless of the result, the case will be decided by the Indiana Supreme Court.</p> <p>[updated 9/16]</p>	<p>May 13-19, 2004 – 19% of state's adults support SSM; 46% oppose all legal recognition (civil unions or SSM). Poll by Indianapolis Star WTHR. See <i>Indianapolis Star</i> article 5/24/2004.</p>

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<b>Iowa</b>	<p>1998 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — State Senate voted down a state constitutional amendment barring same-sex marriage. Also introduced was a state law that would bar civil unions. [updated 4/27/04]</p>	<b>None.</b>	<p><i>Same-Sex Divorce Case Dismissed.</i> Two women entered into a civil union in Vermont and later asked an Iowa trial court to grant them a divorce. In December 2003, the Iowa court initially granted the divorce, but after his action was challenged (because Iowa does not recognize same-sex marriage or Vermont civil unions), the judge reworked the order dividing the couple's property so that the civil union was not recognized.</p>	<p>Des Moines Register Poll (July 17-21), from article dated August 9, 2004, reports:</p> <p>“Just 25 percent of the state's adults favor lifting Iowa's ban on same-sex marriages. They are vastly outnumbered by the 65 percent who say they are opposed to legalizing marriage for gay and lesbian couples. Ten percent are unsure. *** Iowans overall are much less supportive of a constitutional ban. *** Opponents of a constitutional amendment outnumber backers, 49 percent to 43 percent. The rest are unsure.”</p>
<b>Kansas</b>	<p>1996 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — State constitutional amendment was passed out of the state Senate but could not gain the 2/3 support needed in the state House to be placed on the November ballot. [updated 5/4/04]</p>	<b>None.</b>		<p>May 2004 – 56% support a constitutional amendment banning same-sex marriage. Poll by KWCH 12 Eyewitness News and <i>The Wichita Eagle</i>. See <i>The Wichita Eagle</i> article 5/9/04.</p>

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<b>Kentucky</b>	<p>1998 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — Legislature approved constitutional amendment defining marriage as man-woman and put it on the November ballot. Heavy constituent pressure reversed Democrat lawmakers' initial opposition. [updated 4/27/04]</p>	<p><b>PASSED NOVEMBER 2004: 75% to 25%</b></p> <p><b>Kentucky Marriage Amendment Text</b>            "Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized."            [updated 11/4]</p>		<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Sept. 10-15, 2004 – When asked if “for or against constitutional amendment on same-sex marriage,” 71.6% said yes and 22.4% said no. See <i>Courier-Journal</i> article 9/1/04.</p>
<b>Louisiana</b>	<p>1999 — Legislature passed state law defining marriage as man-woman.</p> <p>2004 — The legislature approved sending a proposed amendment to the Louisiana Constitution to voters on September 18. See item to right re: passage.</p>	<p><b>PASSED SEPTEMBER 2004: 78% to 22%</b></p> <p>78% of Louisiana voters approved a state constitutional amendment that defines marriage as a union between a man and a woman only. It also prohibits state officials and courts from recognizing a same-sex marriage, civil union, or domestic partnership performed in Louisiana or any other state.            [updated 11/4]</p>	<p>Activists have filed a lawsuit to challenge the September 18 constitutional amendment approved by 78% of Louisiana voters.</p> <p>On October 5, a state trial court struck down the amendment for violating a single-subject requirement under state law. That decision has been appealed to the state supreme court.            [updated 10/5]</p>	<p>March 2004 — 62% support for a federal constitutional amendment that would ban same-sex marriage.</p>

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<b>Maine</b>	<p>1999 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — Three developments:  — Law enacted refusing recognition to out-of-state same-sex marriages.  — Law enacted granting same-sex couples limited benefits (inheritance rights, guardian rights in event of incapacity of partner).  — Legislature refused to send state constitutional amendment protecting marriage to voters.  [updated 5/10]</p>	<b>None.</b>		<p>March 2004 – 30.3% back full marriage rights; 31.8% oppose any legal recognition of same-sex couples. See <i>Portland Press Herald</i> (Maine) article 3/11/04.</p>
<b>Maryland</b>	<p>1984 — Most recent revision to state marriage law states that only marriage between a man and a woman is valid in Maryland.</p> <p>2004 — State constitutional amendment and proposed state law expressly banning same-sex marriage were introduced and defeated in legislature. (HB 16, HB 728, SB 746).  [updated 5/4]</p>	<b>None.</b>	<p><i>Lawsuit filed July 7, 2004.</i></p> <p>The ACLU filed a lawsuit in state court demanding that the state grant marriage licenses to same-sex couples. This lawsuit is modeled on the <i>Goodridge</i> case in Massachusetts. (AP, 7/7/04)</p>	No apparent polling data.

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State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Massachusetts</b>	<p>In March 2004, the state legislature took the first step towards passing a constitutional amendment that would (a) outlaw same-sex marriage, but (b) create a constitutional right to same-sex civil unions. The amendment must pass the legislature again, and could go to voters no sooner than November 2006.</p> <p>[updated 5/5]</p>	<p><b>None.</b></p> <p>(See item to left.)</p>	<p><u>Goodridge</u> follow-up case pending</p> <p>State law prohibits out-of-state same-sex couples from marrying in Massachusetts if they do not intend to live there. A state trial court upheld the law, and plaintiffs have now appealed to the state's high court.</p> <p>[updated 9/20]</p>	<p>Feb. 2004 – 44% oppose legalization of SSM while 42% favor it. Poll by Suffolk University and WHDH-TV. See Assoc. Press, 2/23/04.</p>
<b>Michigan</b>	<p>1996 —Legislature passed state law defining marriage as man-woman.</p> <p>2004 — State House came up eight votes short of the 2/3 needed to send a state constitutional amendment protecting marriage to the voters. [updated 5/4]</p>	<p><b>PASSED NOVEMBER 2004: 59% to 41%</b></p> <p><b>Michigan Marriage Amendment Text</b>            “To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.”</p> <p>[updated 11/4]</p>		<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Sept. 28-30, 2004 – 52% support and 35% oppose that “the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.” Poll by Glengariff Group.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Minnesota</b>	<p>1997 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — State constitutional amendment banning same-sex marriage was passed by the state House March 24 but rejected by the state Senate Judiciary committee March 26 (HF 2798). Public pressure to send the amendment to the statewide ballot was substantial. (See 5/5/04 WSJ article.) Nevertheless, the state Senate refused to bring the matter up for a vote, and the legislative session ended. [updated 5/19]</p>	<b>None.</b>		<p>March 2004 — 58% said they would vote for a proposed amendment to the state's Constitution that would define marriage as only between a man and a woman. 35% would oppose it. Poll by <i>Star Tribune</i>. See AP St. Paul, Minnesota article 4/6/04.</p>
<b>Mississippi</b>	<p>1997 — Legislature passed state law defining marriage as man-woman.</p> <p>2004 — Legislature has sent a state constitutional amendment to the November 2004 ballot. [updated 4/27]</p>	<p><b>PASSED NOVEMBER 2004: 86% to 14%</b></p> <p><b>Mississippi Marriage Amendment Text</b>            “Marriage may take place and may be valid under the laws of this state only between a man and a woman. A marriage in another state or foreign jurisdiction between persons of the same gender, regardless of when the marriage took place, may not be recognized in this state and is void and unenforceable under the laws of this state.”</p> <p>[updated 11/4]</p>		<p><b>No apparent pre-election polling data on the state amendment.</b></p>

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State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Missouri</b>	<p>1996 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — Legislature sent a state constitutional amendment defining marriage as man-woman to voters on September primary ballot. [updated 5/19]</p>	<p><b>PASSED AUGUST 2004: 70.6% to 29.4%</b></p> <p>On August 18, 2004, 71% of Missouri voters approved a state constitutional amendment to define and protect marriage as between a man and a woman. Note that more Democrats than Republicans came to the polls due to a contested Democrat primary for Governor. [updated 8/4]</p>		See results of ballot initiative.
<b>Montana</b>	<p>1997 — Legislature passed state law protecting marriage as man-woman.</p>	<p><b>PASSED NOVEMBER 2004: 67% to 33%</b></p> <p><b>Montana Amendment Text</b>            “Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.”            [updated 11/4]</p>	<p><i>Case pending in state supreme court.</i>            The Montana chapter of the ACLU sued on behalf of two lesbian employees of the Montana state university system, alleging that the state discriminates against gay and lesbian employees by giving spousal benefits only to married couples. Thus, as in Alaska, plaintiffs do not seek a marriage license, but are challenging the state’s longstanding decision to link marital status to some rights and benefits. The trial court dismissed the case in November 2002, and the case is now pending on appeal before the Montana Supreme Court. The case is <i>Snetsinger vs. Board of Regents</i>.            [updated 8/31]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Sept. 20-22, 2004 – 61% support and 32% oppose a state constitutional amendment. Poll by Mason-Dixon.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Nebraska</b>	None, due to existing state constitutional amendment protecting marriage.	<b>None.</b>  In 2000, Nebraskans passed a state constitutional amendment defining marriage as man-woman and barring civil unions or domestic partnerships with 70% of the vote.	<i>Federal case pending.</i> The ACLU has challenged the state constitutional amendment that defines marriage as man-woman and bars civil unions or domestic partnerships. The ACLU argues that the state constitutional amendment violates the U.S. Supreme Court's decision in <i>Romer v. Evans</i> (1996). In a preliminary ruling, the federal district court (Judge Bataillon) expressed sympathy with the ACLU's claim, prompting Nebraska Attorney General Jon Bruning to tell the Senate Judiciary Subcommittee on the Constitution that he expects Nebraska to lose the case. [updated 10/1/04]	No apparent polling data.
<b>Nevada</b>	None, due to existing state constitutional amendment protecting marriage.	<b>None.</b>  In 2002, Nevadans passed a state constitutional amendment defining marriage as man-woman with 67% of the vote.		March 2004 – 43% would support amendment to the U.S. Constitution to ban gay marriage and 50% would oppose. See AP Las Vegas, NV article, 3/23/04.
<b>New Hampshire</b>	1987 — Latest revision to state marriage law expressly bans same-sex marriage.  2004 — Law enacted to prohibit recognition of out-of-state same-sex marriages.  [updated 8/12]	<b>None.</b>		Feb. 2004 – 55% support gay marriage; 64 % oppose a constitutional amendment. Poll by UNH. See AP Manchester, N.H. article 2/27/04.
<b>New Jersey</b>	2003 — In December 2003, the New Jersey legislature passed a law creating “domestic partnerships” for same-sex couples, granting some but not all of the rights and benefits of marriage to same-sex couples.	<b>None.</b>	<i>Case pending in state court of appeals.</i> In 2002, Lambda Legal filed suit in state court on behalf of same-sex couples seeking to marry. The state district court dismissed their case and Lambda has appealed to the intermediate state appeals court. The case is <i>Lewis v. Harris</i> .	No apparent polling data.



## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>New Mexico</b>	<p>No state statute defining marriage, but state common law defines marriage as man-woman.</p> <p>2004 — The State attorney general issued an opinion in February 2004 stating that marriage in New Mexico is limited to a man and a woman.</p> <p>[updated 5/5]</p>	<b>None.</b>	<p><i>Case pending.</i></p> <p>The Sandoval County clerk issued marriage licenses to same-sex couples in February 2004. A state trial court has issued a preliminary injunction to stop the issuing of these licenses, but the Sandoval County Clerk (Ms. Dunlap) continues to litigate the case. She claims New Mexico's state constitution requires the recognition of same-sex marriage. [updated 8/30]</p>	<p>"62% of the registered voters polled said they would oppose legalizing same-sex marriages, while 28 percent favored the idea. In contrast, 49 percent opposed a state law allowing same-sex civil unions; 44 percent supported the proposal."</p> <p><i>Albuquerque Journal</i>, 3/22/04.</p>
<b>New York</b>	<p>2004 — State attorney general Elliot Spitzer issued an opinion that same-sex marriages may not be performed in New York, but that same-sex marriages from other states should be recognized by New York.</p> <p>2004 — State bills both banning and approving same-sex marriage have been introduced in the state legislature (compare A02998, A07392, A08112, and A10551, as well as counterpart bills in state Senate); none is expected to pass.</p> <p>[updated 5/5]</p>	<b>None.</b>	<p><i>Cases pending in state trial court.</i> In March and July 2004, the ACLU and Lambda Legal each filed lawsuits arguing that to deny same-sex couples the right to marry one another violates the New York Constitution.</p> <p>A state district court dismissed one lawsuit filed by same-sex couples seeking marriage licenses, but that case can be appealed and another lawsuit in another county is still pending.</p> <p>[updated 10/25]</p>	<p>April 2004 – 55% opposed a law that would permit same-sex couples to marry; 37% favored a law. See AP Albany, N.Y. article 4/15/04.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>North Carolina</b>	<p>1996 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — A state constitutional amendment was proposed in the state legislature but it died in committee when the legislature adjourned for the year. [updated 7/20]</p>	<b>None.</b>	<p><i>Case filed, later withdrawn.</i></p> <p>In March 2004, same-sex couple was denied a marriage license by Durham County, NC, so they filed a lawsuit arguing that they have a right to marry each other under the state constitution. The state trial court dismissed their case in May 2004 due to jurisdictional questions. The couple announced in June 2004 that they were dropping their suit for now. [updated 6/24]</p>	<p>Feb. 2004 – 64% oppose gay marriage; 26% support. More than 57% would support an amendment to the U.S. Constitution that defines marriage as being between a man and a woman. Poll by Elon. See AP Charlotte, N.C. article 2/20/04. See similar poll in newsobserver.com, 6/24/04.</p>
<b>North Dakota</b>	<p>1997 — Legislature passed state law protecting marriage as man-woman.</p>	<p><b>PASSED NOVEMBER 2004: 73% to 27%</b></p> <p><b>North Dakota Marriage Amendment Text</b>  “Marriage consists only of the legal union between a man and a woman. No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent effect.”  [updated 11/4]</p>		<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>52% support the amendment, according to Forum poll published by the Associated Press, October 30, 2004.</p>
<b>Ohio</b>	<p>2004 — Legislature passed state law in February 2004 defining marriage as man-woman and barring state employees from obtaining benefits for their unmarried partners. [updated 5/4]</p>	<p><b>PASSED NOVEMBER 2004: 62% to 38%</b></p> <p><b>Ohio Marriage Amendment Text</b>  “Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.”  [updated 11/4]</p>	<p>Lawsuits challenging the popularly enacted state constitutional amendment are anticipated. Legal efforts to block the amendment before it reached the ballot failed. [updated 11/5]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Oct. 16-17, 2004 – 48% support and 45% oppose an amendment to the Ohio constitution which would define marriage as being between a man and a woman, and that would prohibit legally recognized civil unions for gay and lesbian couples. Poll by ABC News.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
Oklahoma	<p>1996 — Legislature passed state law defining marriage as man-woman.</p> <p>2004 — The legislature approved a constitutional amendment defining marriage as the union between a man and a woman. The amendment — which passed the state House 92-4 and the state Senate 38-7 — will be on the statewide ballot in November 2004.</p> <p>[updated 9/25]</p>	<p><b>PASSED NOVEMBER 2004: 76% to 24%</b></p> <p><b>Oklahoma Marriage Amendment Text</b>  “A. Marriage in this state shall consist only of the union of one man and one woman. Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.</p> <p>B. A marriage between persons of the same gender performed in another state shall not be recognized as valid and binding in this state as of the date of the marriage.</p> <p>C. Any person knowingly issuing a marriage license in violation of this section shall be guilty of a misdemeanor.”</p> <p>[updated 11/4]</p>	<p><i>Federal lawsuit filed November 3.</i></p> <p>This lawsuit challenges the state constitutional amendment adopted by 76% of Oklahoma voters, and it asks the federal court to find unconstitutional the federal Defense of Marriage Act.</p> <p>In addition, the ACLU had challenged the November 2004 ballot initiative but the state supreme court dismissed the lawsuit.</p> <p>[updated 11/5]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>October 8-10, 2004 – 59% support and 35% oppose State Question 711 which would define marriage as between one man and one woman. It prohibits giving benefits of marriage to unmarried couples, provides that same-sex marriage in other states are not valid in Oklahoma, and makes issuing a marriage license in violation of this section a misdemeanor. Poll by Wilson Research Strategies (WRS).</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Oregon</b>	<p>2004 — Legislature has been invited by state trial court judge to create same-sex marriage or civil unions, but legislative leaders are balking.</p> <p>[updated 4/27]</p>	<p><b>PASSED NOVEMBER 2004: 57% to 43%</b></p> <p><b>Oregon Marriage Amendment Text</b>                      "It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage."</p> <p>[updated 11/4]</p>	<p><i>Cases working through state court.</i> Multnomah County, which includes Portland, began issuing marriage licenses to same-sex couples in February 2004. 3,022 same-sex marriage licenses were issued to residents of more than 30 states.</p> <p>In July 2004, an intermediate state court of appeals issued a ruling requiring the state to register the 3,022 marriage licenses issued to same-sex couples in the Portland area as valid.</p> <p>In late July, the state supreme agreed to determine whether the (unamended) state constitution permits same sex-marriage in Oregon. The state supreme court is expected to hear oral arguments in that case as early as November 17, 2004.</p> <p>[updated 9/21]</p>	<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Oct. 15-18, 2004 – 50% support and 44% oppose an amendment that recognizes only marriages between a man and a woman as legal and valid by the state. Poll by Gallup.</p>
<b>Pennsylvania</b>	<p>1996 — Legislature passed a state law protecting marriage as man-woman.</p> <p>2004 — State house tabled (96-94) a new state statutory DOMA that would have bolstered the existing 1996 law. The proposal will not be reconsidered until after the November 2004 election. See AP reports, 5/27/04.</p> <p>[updated 5/27]</p>	<p><b>None.</b></p>	<p>No cases challenging state marriage laws.</p> <p>A case is pending in the state supreme court arguing that Philadelphia's domestic partnership ordinance violates a state statutory DOMA. <i>Devlin v. City of Philadelphia</i></p> <p><i>Lawsuit threatened after same-sex couple denied marriage license.</i> Per the 4/26/04 <i>Philadelphia Inquirer</i>, two men were denied a marriage license in Bucks County and are currently contemplating a lawsuit.</p> <p>[updated 11/4]</p>	<p>March 2004 – 63% oppose a law allowing same-sex couples to marry, 31 % support such a law. See <i>The Philadelphia Inquirer</i> 3/19/04.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Rhode Island</b>	<p>No state statute defining marriage, but state common law defines marriage as man-woman.</p> <p>2004 — Bills to legalize and to ban same-sex marriage have been introduced; none is expected to pass. [updated 4/27]</p>	<b>None.</b>	<p><b>OTHER:</b> The state attorney general stated on May 17 that he interpreted Rhode Island law to require recognition of Massachusetts' same-sex marriages. This interpretation is likely to be challenged in court.</p> <p>[updated 5/20]</p>	<p>31% support same-sex marriage; 43% support "civil unions that would give some legal rights"; 24% opposed either form of recognition. See <i>Providence Journal</i> 3/17/04.</p>
<b>South Carolina</b>	<p>1996 — Legislature passed a state law protecting marriage as man-woman.</p> <p>2004 — The state House approved a bill that would strengthen the state's existing DOMA by forbidding the state to recognize same-sex marriages or to grant marriage-like benefits to same-sex couples (HB 4657). [updated 5/4]</p>	<b>None.</b>		No apparent polling data.
<b>South Dakota</b>	<p>1996 — Legislature passed a state law protecting marriage as man-woman.</p> <p>2004 — Bill that would strengthen the state's existing law by forbidding the state to recognize same-sex marriage or to grant marriage-like benefits to same-sex couples was introduced — but failed (HB 1289). [updated 4/27]</p>	<b>None.</b>		<p>April 2004 – 63% support an amendment that would recognize marriage as between one man and one woman and would bar same-sex marriage; 32% oppose. See AP article, 4/3/04.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Tennessee</b>	<p>1996 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — The legislature passed a state constitutional amendment that must receive legislative approval again next year before it can go to voters in 2006.</p> <p>[updated 5/19]</p>	<p><b>None.</b></p> <p>See 2004 item to left.</p>	<p>The Associated Press reported on March 10 that a same-sex couple was planning a lawsuit challenging Tennessee's marriage laws. The Tennessee ACLU is working to develop this case. (See <i>The Tennessean</i>, May 19.)</p>	<p>March 2003 – 70% against SSM; 21% in support of SSM; 61% against civil unions; 32% in support of civil unions. <i>The Tennessean</i>, 3/16/04.</p>
<b>Texas</b>	<p>2003 — Legislature passed a state law protecting marriage as man-woman.</p>	<p><b>None.</b></p>	<p><i>Same-Sex Divorce Case Dismissed.</i> In March 2003, a Texas state court district judge granted a divorce to two Texas men who had entered into a civil union in Vermont in 2002. Later that month the judge vacated his order after the state attorney general stepped in to point out that Texas does not recognize Vermont civil unions.</p>	<p>No apparent polling data.</p>
<b>Utah</b>	<p>1995 — Legislature passed a state law protecting marriage as man-woman.</p>	<p><b>PASSED NOVEMBER 2004: 66% to 34%</b></p> <p><b>Utah Marriage Amendment Text</b>  “(1) Marriage consists only of the legal union between a man and a woman. (2) No other domestic status or union, however denominated, between persons is valid or recognized or may be authorized, sanctioned, or given the same or substantially equivalent legal effect as a marriage.”</p> <p>[updated 11/4]</p>		<p><b>Pre-Election Poll on State Constitutional Amendment:</b></p> <p>Oct. 4, 2004 – 64% support the state constitutional amendment. Poll by KSL-TV.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Vermont</b>	<p>1999 — Marriage is defined as a union of one man and one woman. 15 Vt. Stat. ch. 1, sec. 8.</p> <p>2000 — Legislature enacted state civil unions when state supreme court threatened to impose same-sex marriage on the state.</p> <p>2004 — State constitutional amendment banning same-sex marriage introduced (PR0005) but is not expected to pass. A bill has been introduced that would allow same-sex couples to marry (HB 676).</p> <p>[updated 5/20]</p>	<b>None.</b>		No apparent polling data.
<b>Virginia</b>	<p>1997 — Legislature passed a state law protecting marriage as man-woman.</p> <p>2004 — The legislature passed a new law denying legal recognition to same-sex civil unions (HB 751). Gov. Warner signed the bill.</p> <p>[updated 5/6]</p>	<b>None.</b>	<p><i>State court refuses to recognize Vermont civil unions.</i> Pursuant to the 2004 law passed by the legislature, a state court has refused to recognize or give effect to a same-sex Vermont civil union.</p> <p>[updated 8/30/04]</p>	<p>October 2003 – 64% would oppose a Virginia law allowing same-sex marriage; 25% favored a law. See <i>Daily Press</i> (New port News, VA) 10/25/03.</p>

## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Washington</b>	<p>1998 — Legislature passed state law protecting marriage as man-woman.</p> <p>2004 — State constitutional amendment was introduced but died in state legislative committee when the legislature adjourned (HJR 4220).</p> <p>September 2004 — Several state legislators announced they will push for a constitutional amendment again this winter.</p> <p>[updated 9/22]</p>	<p><b>None.</b></p> <p>(A state constitutional amendment must originate in the Legislature, with a two-thirds vote in both chambers, followed by a statewide public vote.)</p>	<p><i>Cases pending in state trial court and federal DOMA challenge recently addressed in federal bankruptcy court.</i></p> <p>Two <u>state</u> trial court judges have ruled that Washington must issue licenses to same-sex couples in Washington. In one of the cases, two of the plaintiffs are seeking interstate recognition of a marriage license issued in Oregon. Both decisions were stayed pending appeal to the state supreme court.</p> <p>In another case (<i>In re Kandu</i>) in federal bankruptcy court, a lesbian couple married in Canada filed a joint petition for bankruptcy, in violation of DOMA. DOMA was therefore challenged in federal court. In August 2004, the bankruptcy court upheld DOMA. The ruling can be appealed to federal district court and then the Ninth Circuit.</p> <p>[updated 9/7]</p>	<p>March 2004 – more than 50% oppose marriage rights for same-sex couples, compared to 44% who favor them. Poll by <i>The Seattle Times</i>. See AP Spokane, Washington article 4/2/04.</p>
<b>West Virginia</b>	<p>2000 — Legislature passed state law protecting marriage as man-woman.</p>	<p><b>None.</b></p>	<p><i>Case dismissed by state supreme court.</i> On April 21, 2004, the state supreme court denied four same-sex couples' request that the state high court recognize a right to same-sex marriage in the West Virginia constitution <u>and in the U.S. Constitution</u>. It appears that the ACLU lawyers who brought this lawsuit chose not to petition the U.S. Supreme Court for review. [updated 10/20/04]</p>	<p>No apparent polling data.</p>



## State-Level Marriage Protection Activity in 2004

State	Action in Legislature	Statewide Ballot Initiatives in 2004	Court Cases Pending	In-State Polls
<b>Wisconsin</b>	<p>1979 — Marriage is defined as a civil contract between a “husband and a wife.” Wisc. Stat. sec. 765.01.</p> <p>2003 — Proposed statute to establish a state DOMA was approved by the Legislature but vetoed by Democrat Gov. Jim Doyle in 2003. (SJR, 63, AJR 66).</p> <p>2004 — State constitutional amendment banning same-sex marriage and civil unions has been approved by the both chambers of the Legislature. The legislation must clear both houses again in the 2005 session before going before voters in a statewide referendum.</p> <p>[updated 5/20]</p>	<p><b>None.</b></p> <p>No ballot initiative for November 2004. (See item to left.)</p>		<p>April 2004 – 64% support an amendment defining marriage as between a man and a woman. See <i>Capital Times</i> (Madison, WI) 4/12/04.</p>
<b>Wyoming</b>	<p>Wyoming state law only permits marriage between man and a woman.</p> <p>2004 — Legislation to enact a state law modeled after DOMA was introduced but failed in the state legislature.</p> <p>[updated 5/4]</p>	<p><b>None.</b></p>		<p>No apparent polling data.</p>

Additional state-by-state information is available at <http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=353058&columns=true>.